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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,439	12/02/2005	Dietmar Gruber	GRUBER ET AL -2 PCT	2941
25889	7590	11/25/2008		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER LEE, LAURA MICHELLE	
			ART UNIT	PAPER NUMBER
			3724	
			MAIL DATE	DELIVERY MODE
			11/25/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,439	<b>Applicant(s)</b> GRUBER ET AL.	
	<b>Examiner</b> LAURA M. LEE	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/09/2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/02/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The restriction is hereby withdrawn due to the applicant's amendments to the claim dependency.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be "material to patentability as defined in 37 CFR 1.56."

The oath discloses material to patentability as defined in 37 CFR 1.56(a)."

### ***Claim Objections***

3. Claim 1 and 2 are objected to because of the following informalities:

Claim 1, line 9, "which control device" should be changed to --where the control device--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Gatto et al. (U.S. Patent 3,771,393), herein referred to as Gatto. Gatto discloses an apparatus (10) for severing profile pieces (P) of an extruded strand moved in its longitudinal extension, comprising a carriage (12) which is movable along the profile strand (see Fig.1) and comprises a severing device (40/42) with a saw blade (42) and at least two clamping jaws (122/122) for holding in a non-displaceable manner the carriage (12) on the profile strand (P) and comprising a control device (console, 118) connected with the clamping jaws(122)and the severing device (40/42), which control device triggers (trigger switch, 140) the clamping jaws and the severing device depending on a predetermined length of the profile piece, wherein the severing device (40/42) is associated with a knife (40) which can be moved transversally to the longitudinal extension of the profile strand, and that the control device comprises a selector circuit (programming the console, 118; col. 8, lines 50-56) for optionally severing the profile piece with the saw blade or the knife.

In regards to claim 2, Gatto discloses wherein the knife (40) is laterally offset (i.e. wider than) relative to the sawing plane of the saw blade (42) and at least the saw blade

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and the knife are encompassed by a common housing (12/16/18) fastened to the carriage (12).

In regards to claim 3, Gatto discloses wherein the control device considers a corrective value based on the distance between the saw blade and the knife (i.e. depth of cut/ diameter of pipe) depending on the selector circuit when triggering the clamping jaws (122) and the severing device (40/42).

In regards to claim 4, Gatto discloses wherein an input device (console, 118) for reading in the corrective value is connected with a memory of the apparatus, and that the control device reads out the corrective value from the memory depending on the selector circuit.

In regards to claim 5, Gatto discloses wherein the knife (40) consists of a knife disk which is rotatably held about an axis parallel to the longitudinal extension of the profile stand.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 3,717,058; U.S. Patent 4,292,867; U.S. Patent 5,335,570; U.S. Patent 4,299,147, U.S. Patent 6,009,780; U.S. Patent 4,084,463;

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA M. LEE whose telephone number is (571)272-8339. The examiner can normally be reached on Monday through Friday, 8:00am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura M Lee/  
Examiner, Art Unit 3724  
11/07/2008

/Boyer D. Ashley/  
Supervisory Patent Examiner, Art Unit 3724